

Effective July 1, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for non-state nursing facilities to reduce the per diem rates.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part VII. Long Term Care Services

Subpart 1. Nursing Facilities

Chapter 13. Reimbursement

§1305. Rate Determination

A. ...

B. For dates of service on or after January 1, 2003, the Medicaid daily rates shall be based on a case-mix price-based reimbursement system. Rates shall be calculated from cost report and other statistical data.

1. Effective July 3, 2009, and at a minimum, every second year thereafter, the base resident-day-weighted median costs and prices shall be rebased using the most recent four month or greater unqualified audited or desk reviewed cost reports that are available as of the April 1, prior to the July 1 rate setting. The department, at its discretion, may rebase at an earlier time.

a. For rate periods between rebasing, an index factor shall be applied to the base resident-day weighted medians and prices.

C. - E. ...

F. Effective for dates of service on or after January 22, 2010, the reimbursement paid to non-state nursing facilities shall be reduced by 1.5 percent of the per diem rate on file as of January 21, 2010 (\$1.95 per day) until such time as the rate is rebased.

G. Effective for dates of service on or after July 1, 2010, the per diem rate paid to non-state nursing facilities shall be reduced by an amount equal to 4.8 percent of the non-state owned nursing facilities statewide average daily rate on file as of July 1, 2010 until such time as the rate is rebased.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1791 (August 2002), amended LR 31:1596 (July 2005), LR 32:2263 (December 2006), LR 33:2203 (October 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:325 (February 2010), repromulgated LR 36:520 (March 2010), amended LR 36:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Alan Levine
Secretary

1007#024

DECLARATION OF EMERGENCY

**Department of Health and Hospitals
Bureau of Health Services Financing**

**Nursing Facility Minimum Licensing Standards
Nurse Aide Training and Competency Evaluation Program
(LAC 48:I.Chapter 100)**

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 48:I.Chapter 100 in the Medical Assistance Program as authorized by R.S. 36:254. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repealed the provisions governing the Nurse Aide Training and Competency Evaluation Program in Title 50 of the *Louisiana Administrative Code* (LAC) and repromulgated these provisions in LAC 48:I.Chapter 100, under licensing standards for nursing facilities (*Louisiana Register*, Volume 32, Number 11).

ACT 357 of the 2009 Regular Session of the Louisiana Legislature directed the department to establish provisions for state registration of all certified nurse aides (CNAs) working in nursing homes and skilled nursing facilities and related matters, including restricted registrations, minimum requirements to maintain certification and provisions for complaint investigations. In compliance with Act 357, the Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend the provisions governing the Nurse Aide Training and Competency Evaluation Program in order to establish state registration requirements for CNAs who work in nursing facilities and hospital-based skilled nursing facility units. This Emergency Rule will also establish minimum requirements to maintain nurse aide certification and complaint investigation procedures. This action is being taken to promote the health and welfare of nursing facility residents by assuring that CNAs have the proper training and certifications. It is estimated that implementation of this Emergency Rule will have no programmatic costs for state fiscal year 2010-2011.

Effective August 15, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the Nurse Aide Training and Competency Evaluation Program.

Title 48

PUBLIC HEALTH – GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

**Chapter 100. Nurse Aide Training and Competency
Evaluation Program**

Subchapter A. General Provisions

§10001. Definitions

* * *

Certified Nurse Aide—an individual who has completed a nurse aide training and competency evaluation program

(NATCEP) approved by the state as meeting the requirements of 42 CFR 483.151-483.154, or has been determined competent as provided in 42 CFR 483.150(a) and (b), and is listed as certified and in good standing on Louisiana's nurse aide registry.

* * *

Nursing Homes or Nursing Facilities—any entity or facility serving two or more persons, who are not related to the operator by blood or marriage, that undertakes to provide maintenance, personal care or nursing for persons who are unable to properly care for themselves by reason of illness, age or physical infirmity.

Trainee—an individual who is at least 17 years old and is enrolled in a nurse aide training and competency evaluation program, whether at a nursing facility or educational facility, with a goal of becoming a certified nurse aide.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2074 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

§10003. State Registration Requirements

A. Effective August 15, 2010, any nurse aide seeking employment with a nursing facility or hospital-based SNF shall be required to meet state registration and certification requirements.

B. The department will provide automatic registration of all certified nurse aides in the state, who according to the Louisiana Nurse Aide Registry, are employed with or contracted by a nursing facility or hospital-based skilled nursing facility (SNF) on August 15, 2010.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

Subchapter B. Training and Competency Requirements

§10013. Trainee Responsibilities

A. Each nurse aide trainee must be at least 17 years old.

B. Each nurse aide trainee should be clearly identified as a trainee during all clinical portions of the training. Identification should be recognizable to residents, family members, visitors and staff.

C. Trainees must take the competency evaluation (through skills demonstration and either written or oral examination) within 30 days after completion of the training program.

1. Trainees will be provided with a maximum of three opportunities within one year following completion of the training program to successfully complete the competency evaluation program.

D. Registered nurses (RNs) and licensed practical nurses (LPNs) who have completed online courses are required to provide an official transcript to determine eligibility to test.

E. If trained in another state, the trainee must test and certify to the registry in that state before transferring to Louisiana, or retrain and test in Louisiana.

F. Military personnel must provide a copy of their military transcript and other documentation needed to determine eligibility to certify to the registry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2075 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

§10015. Training Curriculum

A. Each nurse aide training program shall provide all trainees with an orientation of the clinical training site that is a minimum of four hours long. This orientation is in addition to the total hours approved for the training program/school. The orientation shall include, but is not limited to:

1. - 5. ...

B. Training Curriculum

1. Providers applying to have a training program after the effective date of this Rule must use one of the two state-approved curriculums.

a. ...

2. Each additional unit objective added to the approved curriculum, above the minimum 80 hours, must be behaviorally-stated for each topic of instruction. Each objective must state performance criteria which are measurable and will serve as the basis for the competency evaluation.

a. The unit objectives will be reviewed with the trainees at the beginning of each unit so each trainee will know what is expected of him/her in each part of the training.

c. Any additional topics of instruction will require review and approval from the department.

C. Curriculum Goals and Content

1. - 3. ...

D. The training program must be conducted to ensure that each nurse aide, at a minimum, is able to demonstrate competencies in the following areas:

1. basic nursing skills including, but not limited to:

a. - i. ...

j. attaining and maintaining certification in cardiopulmonary resuscitation;

1.k. - 5.h. ...

E. Program Approval

1. To get a nurse aide training program approved, the facility or school must submit to the department the application, completed in its entirety, which denotes the state-approved curriculum that will be used and all required documentation stipulated in the Nurse Aide Training packet.

a. - c. Repealed.

2. All schools applying for approval must identify the physical location used for classroom instruction and for clinical experience. Non-facility based programs must also submit clinical contracts.

3. Approval to provide nurse aide training is granted specifically for the provider who submitted the application. There is no provision for subcontracting the training program.

4. If an approved program ceases to provide a nurse aide training and competency evaluation program for a two year period, the program will be closed. The provider must reapply if they wish to provide training at a later date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2075 (November 2006), amended by the

§10017. Coordinators, Instructors and Trainers

A. ...

1. The program coordinator must be a registered nurse (RN) with a current Louisiana license and must have the following experience and qualifications:

a. - b. ...

2. The program coordinator may supervise no more than two nurse aide training programs simultaneously and must be on the premises where the program is being conducted for at least 50 percent of the duration of the program.

B. Instructors. Instructors may be RNs or LPNs and must hold a current Louisiana license. Licensed practical (vocational) nurses, under the general supervision of the coordinator, may provide classroom and skills training instruction and supervision of trainees if they have two years of experience in caring for the elderly and/or chronically ill of any age, experience in teaching LPN or RN students or have equivalent experience.

1. Such experience is normally obtained through employment in:

- a. a nursing facility;
- b. a geriatrics department;
- c. a chronic care hospital; or
- d. other long-term care setting.
- e. - m. Repealed.

2. Experience in resident care, supervision and staff education is preferred.

3. The ratio of instructors to trainees in clinical training is 1:10 and the ratio of instructors to trainees in the classroom should not exceed 1:23.

C. Program Trainers. Qualified resource personnel from the health field may participate as program trainers as needed for discussion or demonstration of specialized core procedures.

1. Qualified resource personnel must have a minimum of one year of experience in their field and must be licensed, registered and/or certified, if applicable, and may include:

- a. registered nurses;
- b. licensed practical/vocational nurses;
- c. pharmacists;
- d. dietitians;
- e. social workers;
- f. sanitarians;
- g. fire safety experts;
- h. nursing home administrators;
- i. gerontologists;
- j. psychologists;
- k. physical and occupational therapists;
- l. activities specialists; and
- m. speech/language/hearing therapists.

2. All program trainers must have a minimum of one year of current experience in caring for the elderly and/or chronically ill of any age or have equivalent experience.

3. The training program may utilize other persons such as residents, experienced aides and ombudsmen as resource personnel if these persons are needed to meet the planned program objectives or a specific unit of training.

D. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2076 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

§10019. Training Program Responsibilities

A. The facility/school shall not accept a nurse aide trainee into a training program until the facility or school determines that the nurse aide trainee:

1. has not been convicted or found guilty by a court of law of:

- a. abusing, neglecting or mistreating the elderly or infirm as defined by R.S. 40:2009.20 or
- b. misappropriating a resident's property; or
- c. has not had a finding of abuse, neglect, mistreatment or misappropriation of a resident's property placed on the Nurse Aide Registry or the Direct Service Worker Registry.

2. A criminal history back ground check shows no convictions or listing on the national sex offender public registry in accordance with R.S. 40:1300.53. Trainees may obtain a certified copy of their criminal history from the Louisiana State Police by requesting that a "right to review" be conducted.

3. Trainees shall not be prohibited from completing training due to criminal history that is not related to abuse, neglect or misappropriation.

B. For facility-based training programs, the facility shall assure that trainees do not perform any care and services for which they have not been trained and found proficient by the instructor. Trainees providing services to residents must be under the general supervision of a licensed nurse approved to work in a nurse aide training program.

1. Trainees enrolled in facility based training programs must complete training within 30 days of beginning the program.

2. A class roster, as well as the beginning and ending dates of each training class, shall be clearly documented and available for review at all times. This shall be available for both classroom and clinical instruction.

C. ...

D. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2077 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

§10023. Compliance with Federal and State Regulations

A. The department shall review all components of a training and competency evaluation program for compliance with federal and state regulations.

1. For facility-based programs, after initial approval of a training and competency evaluation program, the Department will conduct an initial one year post-approval review at the annual survey to determine the program's implementation of and compliance with the requirements.

2. For non-facility based programs, the Department will conduct an initial one year post-approval review and thereafter will conduct a review every two years.

B. After the one year post-approval review, an on-site review of the program will be conducted at least every two

years Programs not meeting the minimum requirements may be terminated if the program does not provide an acceptable plan for correcting deficiencies.

C. Programs not accessible or refusing to permit unannounced visits by the department will be terminated.

D. A program that has not conducted training or certified trainees to the registry within a two year period will be closed.

E. Operational Requirements

1. In order to be considered operational and retain approval to conduct a training program, providers must have at least one employee on duty at the business location during the hours of operation reported on the training program application submitted to the DHH Health Standards Section.

2. All nurse aide training providers (facility based and non-facility based) shall maintain a current, operational telephone number, fax number and e-mail address and shall keep the department informed of any changes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2078 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

§10025. Nurse Aide Responsibilities

A. A certified nurse aide employed or contracted by a nursing facility or hospital-based SNF to provide nursing assistant services shall apply for registration with the department. Each application for registration of a certified nurse aide shall be submitted to the department on forms or other methods designated by the department, and shall contain such information required by the department. Any additional information required by the department shall be provided upon request.

B. In order to maintain certification, the certified nurse aide employed or contracted by a nursing facility or hospital-based SNF shall perform a minimum of 90 days or 720 hours of certified nurse aide duties in one nursing facility or hospital based SNF within a 120 day period each year.

1. The department shall confirm the completion of the required hours at least once every two years.

C. Nurse aides working in clinical settings other than nursing facilities or hospital based SNFs must perform at least eight hours of nursing or nursing related services in an approved setting during every consecutive 24 month period for pay after completion of a training and competency evaluation program to maintain certification.

D. Nurse aides working in a nursing facility or hospital-based SNF and in any other approved setting simultaneously during the two year registration period, must comply with the requirement for 90 days or 720 hours of certified nurse aide duties in one nursing facility or hospital-based SNF within a 120 day period each year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2078 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

Subchapter C. Nurse Aide Registry

§10033. General Provisions

A. The Department of Health and Hospitals shall develop and maintain a registry for individuals who have successfully completed a nurse aide training and/or competency evaluation program. Each individual listed on the registry will have the following information maintained and retrievable:

1. name;
2. address;
3. Social Security Number;
4. phone number;
5. e-mail address;
6. place of employment;
7. date of employment;
8. date employment ceased;
9. state certification number;
10. state registration number, as appropriate; and
11. documentation of any investigation, including codes for specific findings of a resident's:

a. abuse;

b. neglect;

c. misappropriated property; and

d. an accurate summary of findings only after actions on findings are final.

B. The registry will renew certification in accordance with the provisions of §10025 of this Chapter.

C. ...

D. If there is a final and binding administrative decision to place a finding on the registry or if there is a final conviction, guilty plea or no contest plea to a crime(s) by a nurse aide against the elderly, infirm or a nursing facility resident, the department shall place the adverse finding on the registry. Record of the occurrence and associated findings will remain permanently on the registry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2078 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

§10035. Certification by Reciprocity

A. Nurse aides may become certified by reciprocity from other states. Applicants must, at a minimum, submit to the Nurse Aide Registry the following information:

1. his/her name;
2. his/her Social Security Number;
3. his/her e-mail address;
4. the certification number in the other state;
5. the address of the other state's registry;
6. his/her former place of employment; and
7. the date of employment and termination.

B. ...

C. Nurse aides granted reciprocity in Louisiana and who plan to be employed in a nursing facility or hospital-based SNF must also apply for state registration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health

Services Financing, LR 32:2079 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

Subchapter D. Provider Participation

§10045. Training Program Responsibilities

A. A person cannot be employed as a nurse aide or nurse aide trainee by a nursing facility or hospital-based SNF for more than 30 days unless he/she has satisfactorily completed an approved training and competency evaluation program.

B. Prior to employing or contracting with a certified nurse aide, a nursing facility or hospital-based SNF unit shall verify through the Louisiana's Certified Nurse Aide Registry that the certified nurse aide is currently certified and has a current state registration.

C. A person cannot be employed as a nurse aide or nurse aide trainee if there is a final administrative or judicial court decision that the nurse aide or trainee has:

1. committed abuse, neglect or mistreatment of the elderly, infirm or nursing facility resident; or
2. misappropriated a resident's property.

D. The provider must complete and send the appropriate form to the Registry to notify the Registry of employment or termination of a certified nurse aide.

1. Failure to send notification to the Registry within five working days of employment or termination may result in further adverse action against the provider.

E. All facilities will continue to provide on-going training on a routine basis in groups and, as necessary in specific situations, on a one-to-one basis.

1. Each nurse aide must receive and be compensated for 12 hours of on-going training per year.

2. Training can be received in the unit as long as it is:

- a. directed toward skills improvement;
- b. provided by appropriately trained staff; and
- c. documented.

F. When a change of ownership (CHOW) occurs, the new owner or the administrator/designee is responsible for ensuring that all reporting of employment and termination to the registry is current. In the event that a request for verification of work history is received after the CHOW occurs, the current owner is responsible for compliance.

G. The facility administrator/designee is responsible for reporting work history to the registry for nurse aides employed by staffing agencies. This shall be done at least monthly.

H. No nurse aide who is employed by, or who has received an offer of employment from, a facility on the date on which the aide begins a nurse aide competency evaluation program may be charged for any portion of the program.

I. If an individual who is not employed, or does not have an offer to be employed as a nurse aide becomes employed by, or receives an offer of employment from, a facility not later than 12 months after completing a nurse aide competency evaluation program, the state must provide for the reimbursement of costs incurred in completing the program on a pro rata basis during the period in which the individual is employed as a nurse aide.

J. Providers shall issue a certificate of completion to nurse aides who successfully complete training and competency evaluation programs.

K. If a training program is facility-based, the administrator or their designee shall reconcile with the nurse aide registry at least monthly, their CNAs that are employed

or have been terminated. Accuracy of information held by the registry is the responsibility of the facility. Failure to maintain current data shall result in adverse action by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2079 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

Subchapter G. Medication Attendant Certified

§10081. General Provisions

A. The Department of Health and Hospitals (DHH) implements a three-year pilot project which establishes provisions for the use of medication attendants certified in licensed nursing facilities. The department shall also develop and maintain a registry of individuals who have, at a minimum, successfully completed a state-approved medication attendant certified training course and competency evaluation, and criminal background check.

B. The medication attendant certified registry will contain the following items:

1. a list of individuals who have successfully completed a medication attendant certified training curriculum and competency evaluation. Each individual listed will have the following information maintained on the registry:

- a. name;
- b. address;
- c. Social Security number;
- d. phone number;
- e. e-mail address;
- f. place of employment;
- g. date of employment;
- h. date employment ceased;
- i. state certification number;
- j. documentation of any investigation including codes for specific findings of:
 - i. - v. ...

k. information relative to training and registry status which will be available through procedures established by the department.

C. ...

D. A certificate holder must notify the department within 30 days after changing his or her address or name.

E. A medication attendant certified or his or her employer, if aware, must immediately notify the department of any arrest in any state.

F. A person who holds a valid license, registration or certificate as a medication attendant issued by another state may also be certified in Louisiana if the transferring state's training program is at least 100 hours or more and the applicant passes the state competency examination.

1. The applicant must submit a request for reciprocity to the registry.

2. ...

3. The department may contact the issuing agency to verify the applicant's status with the agency.

G. - G.2. ...

H. The department shall deny renewal of the certificate of a medication attendant certified who is in violation of this Chapter at the time of the application renewal.